

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 480 & 615

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Body Art Safe Practices Act".

Section 2. PURPOSE. -- The purpose of the Body Art Safe
Practices Act is to provide a safe and healthy environment for
body art.

Section 3. DEFINITIONS. -- As used in the Body Art Safe
Practices Act:

A. "board" means the board of barbers and
cosmetologists;

B. "body art" means tattooing, body piercing or
scarification but does not include practices that are

1 considered medical procedures by the New Mexico board of
2 medical examiners;

3 C. "body art establishment" means a fixed or mobile
4 place where body art is administered on the premises;

5 D. "body piercing" means to cut, stab or penetrate
6 the skin to create a permanent hole or opening;

7 E. "contaminated waste" means liquid or semiliquid
8 blood or other potentially infectious materials; contaminated
9 items that would release blood or other potentially infectious
10 materials in liquid or semiliquid state if compressed; items
11 that are caked with dried blood or other potentially infectious
12 materials and are capable of releasing these materials during
13 handling; and contaminated sharps and pathological and
14 microbiological wastes containing blood and other potentially
15 infectious materials;

16 F. "disinfection" means the killing of
17 microorganisms, but not necessarily their spores, on inanimate
18 objects;

19 G. "employee" means a person employed in a body art
20 establishment who administers body piercing, tattooing or
21 scarification;

22 H. "equipment" means machinery used in connection
23 with the operation of a body art establishment, including
24 fixtures, containers, vessels, tools, devices, implements,
25 furniture, display and storage areas, sinks and other

1 apparatuses and appurtenances;

2 I. "handsink" means a lavatory equipped with hot
3 and cold running water under pressure, used solely for washing
4 hands, arms or other portions of the body;

5 J. "instruments used for body art" means hand
6 pieces, needles, needle bars and other items that may come into
7 contact with a person's body during the administration of body
8 art;

9 K. "invasive" means entry into the body either by
10 incision or insertion of an instrument into or through the skin
11 or mucosa or by other means intended to compromise the skin or
12 mucosa;

13 L. "operator" means the owner or his agent in
14 charge of a body art establishment;

15 M. "procedure surface" means any surface that
16 contacts the client's unclothed body during a body art
17 procedure or any associated work area that may require
18 sanitizing;

19 N. "scarification" means cutting into the skin with
20 a sharp instrument or branding the skin with a heated
21 instrument to produce a permanent mark or design on the skin;

22 O. "sharps" means any sterilized object that is
23 used for the purpose of penetrating the skin or mucosa,
24 including needles, scalpel blades and razor blades;

25 P. "sharps container" means a puncture-resistant,

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1 leak-proof container that can be closed for handling, storage,
2 transportation and disposal and is labeled with the
3 international "biohazard" symbol;

4 Q. "single use" means products or items that are
5 intended for one-time, one-person use and are disposed of after
6 use on each client, including cotton swabs or balls, tissues or
7 paper products, paper or plastic cups, gauze and sanitary
8 coverings, razors, piercing needles, scalpel blades, stencils,
9 ink cups and protective gloves;

10 R. "sterilization" means destruction of all forms
11 of microbiotic life, including spores; and

12 S. "tattooing" means the practice of depositing
13 pigment into the epidermis using needles, which is either
14 permanent, semipermanent or temporary, by someone other than a
15 state-licensed physician or a person under the supervision of a
16 state-licensed physician and includes permanent cosmetics,
17 dermatography, micropigmentation, permanent color technology and
18 micropigment implantation.

19 Section 4. LICENSE--APPLICATION--REVOCATION--
20 SUSPENSION.--

21 A. An employee of a body art establishment shall
22 obtain a body artist license, requirements for which shall be
23 defined by the board that demonstrate that the employee has the
24 training and experience necessary to perform body piercing,
25 tattooing or scarification.

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1 B. A person shall not operate a body art
2 establishment unless he possesses a valid and unsuspended
3 license issued by the board in accordance with the Body Art
4 Safe Practices Act and the rules promulgated pursuant to that
5 act. The license shall be posted in a conspicuous place within
6 the body art establishment. A person shall not display a
7 license unless it has been issued to him by the board and has
8 not been suspended or revoked.

9 C. A person desiring to operate a body art
10 establishment shall apply to the board for the issuance of a
11 license. Applications shall be made in the form and in
12 accordance with procedures established by the rules of the
13 board. The board shall issue a license to an applicant who
14 complies with the rules of the board covering the issuance of
15 licenses and who demonstrates to the satisfaction of the board
16 his ability to comply with all the provisions of the Body Art
17 Safe Practices Act. The body art establishment shall renew the
18 license annually. The board shall set license fees and license
19 renewal fees in amounts necessary to administer the provisions
20 of the Body Art Safe Practices Act.

21 D. The board shall promulgate rules for the
22 revocation or suspension of licenses for those body art
23 establishments that fail to comply with a provision of the Body
24 Art Safe Practices Act. A license shall not be suspended or
25 revoked pursuant to the Body Art Safe Practices Act without

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1 providing the operator of a body art establishment an
2 opportunity for an administrative hearing. The hearing officer
3 shall not be a person previously involved in the suspension or
4 revocation action. An inspection made more than twenty-four
5 months prior to the most recent inspection shall not be used as
6 a basis for suspension or revocation.

7 E. Within ninety days of the receipt of a license,
8 the body art operator and his employees shall provide proof of
9 attendance at a blood-borne pathogen training program approved
10 by the board. Subsequently, the body art operator and his
11 employees shall annually attend a blood-borne pathogen training
12 program.

13 F. An individual not licensed may work as an
14 apprentice employee provided that the apprentice employee
15 completes an approved blood-borne pathogen training program,
16 practices under the direct supervision of a licensed employee
17 and meets requirements established by the board.

18 G. A current body art establishment license shall
19 not be transferable from one person to another.

20 H. Body art establishments engaged in the body art
21 business before the effective date of the Body Art Safe
22 Practices Act shall have ninety days from the effective date of
23 that act to comply with the license requirements.

24 I. The following information shall be kept on file
25 on the premises of a body art establishment and available for

1 inspection by the board:

2 (1) the full names of all employees in the
3 establishment and their exact duties;

4 (2) the following information pertaining to
5 all employees:

6 (a) date of birth;

7 (b) gender;

8 (c) home address; and

9 (d) phone number;

10 (3) the board-issued license with
11 identification photograph;

12 (4) the body art establishment name and hours
13 of operation;

14 (5) the name and address of the body art
15 establishment owner;

16 (6) a complete description of all body art
17 performed;

18 (7) a list of all instruments, body jewelry,
19 sharps and inks used, including names of manufacturers and
20 serial or lot numbers or invoices or their documentation
21 sufficient to identify and locate the manufacturer; and

22 (8) a copy of the Body Art Safe Practices Act.

23 J. A holder of a license to operate a body art
24 establishment who intends to change the location of the
25 establishment shall notify the board in writing of that intent

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1 not less than thirty days before the change is to occur. The
2 notice shall include the street address of the new location.

3 Section 5. INSPECTION BY BOARD. --

4 A. The board shall annually inspect body art
5 establishments to determine compliance or lack of compliance
6 with the Body Art Safe Practices Act. The procedures for
7 inspection shall be in accordance with the rules of the board.
8 Upon request by the board to a body art establishment operator
9 or to his employee or agent in charge of the body art
10 establishment premises, he shall allow the board official, upon
11 proper identification, to enter the premises, inspect all parts
12 of the premises and inspect and copy records of the body art
13 establishment. The operator, his employee or agent in charge
14 of the body art establishment premises shall be given an
15 opportunity to accompany the board official on his inspection
16 and to receive a report of the inspection within fourteen days
17 after the inspection. Refusal to allow an inspection is
18 grounds for suspension or revocation of the license of the
19 operator, provided that the board official tendered proper
20 identification prior to the refusal.

21 B. During an inspection the board may take samples
22 of equipment and supplies on the premises for the purpose of
23 determining compliance with the provisions of the Body Art Safe
24 Practices Act. The board shall return any samples of equipment
25 or supplies after the investigation is complete.

1 C. Inks, dyes and pigments may be inspected to
2 ensure their sterility.

3 Section 6. EXEMPTION. --A person who pierces only the
4 outer perimeter of the ear, not including any cartilage, using
5 a pre-sterilized encapsulated single use stud ear piercing
6 system, implementing appropriate procedures, is exempt from the
7 requirements of the Body Art Safe Practices Act. A person who
8 uses those ear piercing systems shall conform to the
9 manufacturer's directions on use and applicable United States
10 food and drug administration requirements. All ear piercers
11 shall employ handwashing or use of an antibacterial gel and
12 wear disposable medical gloves, which are to be discarded after
13 use for each customer. The board may investigate consumer
14 complaints relating to alleged misuse or improper procedures
15 involving ear piercing systems.

16 Section 7. REQUIREMENTS FOR SINGLE USE ITEMS. --

17 A. All sharps shall be sterilized prior to use and
18 stored in paper peel-packs.

19 B. Single use items shall not be used on more than
20 one client for any reason. After use, all single use needles,
21 razors and other sharps shall be immediately disposed in
22 approved sharps containers. Piercing needles are strictly
23 single use.

24 C. All body art stencils shall be single use and
25 disposable. Petroleum jellies, soaps and other products used

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1 in the application of stencils shall be dispensed and applied
2 on the area to be tattooed with sterile gauze or in a manner
3 that prevents contamination of the original container and its
4 contents. The gauze shall be used only once and then
5 discarded.

6 Section 8. SANITATION AND STERILIZATION. --

7 A. Nondisposable instruments used to administer
8 body art shall be cleaned thoroughly after each use by
9 scrubbing with an antimicrobial soap solution and hot water or
10 an appropriate disinfectant to remove blood and tissue residue
11 and placed in an ultrasonic unit, which shall remain on the
12 premises of the body art establishment and which shall be
13 operated in accordance with the manufacturer's instructions.

14 B. After cleaning, all nondisposable instruments
15 used to administer body art shall be packed individually in
16 paper peel-packs and sterilized. All paper peel-packs shall
17 contain either a sterilizer indicator or internal-temperature
18 indicator. Properly packaged, sterilized and stored equipment
19 shall be stored no more than one year. Paper peel-packs shall
20 be dated with an expiration date not to exceed one year.
21 Sterile equipment may not be used after the expiration date
22 without first repackaging and resterilization.

23 C. All nondisposable instruments used for body art
24 shall be sterilized in an autoclave at the body art
25 establishment. Off-site sterilization is prohibited. The

1 sterilizer shall be used, cleaned and maintained according to
2 the manufacturer's instructions. A copy of the manufacturer's
3 recommended procedures for the operation of the sterilization
4 unit shall be available for inspection by the board.

5 D. A holder of a license to operate a body art
6 establishment shall demonstrate that the sterilizer used is
7 capable of attaining sterilization by monthly spore destruction
8 tests. Those tests shall be verified through an independent
9 laboratory. A license shall not be issued or renewed until
10 documentation of the sterilizer's ability to destroy spores is
11 received by the board. Those test records shall be retained by
12 the operator for a period of three years and provided to the
13 board upon request.

14 E. After sterilization, the instrument used for
15 body art shall be stored in a dry, clean cabinet or other
16 tightly covered container reserved for the storage of
17 instruments.

18 F. Instruments used for body art shall remain
19 stored in sterile packages until just prior to performing a
20 body art procedure. When assembling instruments used for
21 performing body art, the employee shall wear disposable medical
22 gloves and use techniques to ensure that the instruments and
23 gloves are not contaminated.

24 G. Inks, dyes, pigments and sharps shall be
25 specifically manufactured for performing body art procedures

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1 and shall not be adulterated. Immediately before applying a
2 tattoo, the quantity of the dye to be used for the tattoo shall
3 be transferred from the bottle and placed into sterile, single
4 use paper cups or plastic caps. Upon completion of the tattoo,
5 those single use cups or caps and their contents shall be
6 discarded.

7 Section 9. IMMEDIATE SUSPENSION. --The board may suspend a
8 license immediately without prior notice to the holder of the
9 license if it determines, after inspection, that conditions
10 within a body art establishment present a substantial danger of
11 illness, serious physical harm or death to customers who might
12 patronize a body art establishment. A suspension action taken
13 pursuant to this section is effective when communicated to the
14 operator or an employee or agent of the operator who is in
15 charge of the premises involved. If there is no designated
16 employee or agent in charge of the premises, communication to
17 an employee physically present on the premises is sufficient
18 communication to make the suspension effective. Suspension
19 action taken pursuant to this section shall not continue beyond
20 the time that the conditions causing the suspension cease to
21 exist, as determined by a board inspection at the request of
22 the operator.

23 Section 10. JUDICIAL REVIEW. --A person to whom the board
24 denies a license or whose license is suspended or revoked by
25 the agency may appeal pursuant to Section 39-3-1.1 NMSA 1978.

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1 Section 11. ENFORCEMENT. --

2 A. The board may seek relief in district court to
3 enjoin the operation of a body art establishment not complying
4 with the Body Art Safe Practices Act.

5 B. The district court may impose a civil penalty
6 not exceeding five hundred dollars (\$500) on a person who
7 violates a provision of the Body Art Safe Practices Act. Each
8 violation of the provisions of the Body Art Safe Practices Act
9 constitutes a separate offense.

10 Section 12. DISEASE CONTROL. -- A skin or mucosa surface to
11 receive a body art procedure shall be free of rash, infection
12 or any other visible active pathological condition. The skin
13 of the employee shall be free of rash, infection or any other
14 visible pathological condition. An employee affected with
15 boils, infected wounds, open sores, abrasions, exudative
16 lesions, acute respiratory infection, nausea, vomiting or
17 diarrhea shall not work in any area of a body art establishment
18 in any capacity in which there is a likelihood of contaminating
19 body art equipment, supplies or working surfaces with
20 pathogenic organisms.

21 Section 13. RECORDS RETENTION-- PERMISSION TO REFUSE
22 SERVICE. --

23 A. The body art establishment shall keep a record
24 of all persons who have had body art procedures performed. The
25 record shall include the name, date of birth and address of the

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1 client; the date of the procedure; the name of the employee who
2 performed the procedure; the type of procedure performed and
3 its location on the client's body; the signature of the client;
4 and if the client is a minor, written proof of parental or
5 guardian presence and consent.

6 B. An operator or employee may photocopy the
7 client's, parent's or guardian's photographic identification
8 for verification purposes and may refuse to provide body art
9 services if the client, parent or guardian refuses to permit
10 the photocopying of the identification.

11 C. An operator or employee may refuse to provide
12 body art services to a client who is or appears to be
13 intoxicated.

14 Section 14. BODY ART SAFE PRACTICES FUND. --The "body art
15 safe practices fund" is created in the state treasury. All
16 license fees, charges and fines imposed by the board shall be
17 deposited in the fund. Money in the fund is appropriated to
18 the board for the purpose of carrying out the provisions of the
19 Body Art Safe Practices Act. Any unexpended or unencumbered
20 balance remaining at the end of a fiscal year shall not revert
21 to the general fund.

22 Section 15. PARENTAL CONSENT. --A body art establishment
23 shall require that all of its customers present proof that they
24 are eighteen years of age or older prior to administering body
25 art. If a customer is under eighteen years of age, the body

1 art establishment shall require a notarized informed consent
2 form from and the presence of his parent or legal guardian
3 before administering body art. The parent or legal guardian
4 shall personally deliver the notarized informed consent and
5 remain present throughout the administration of the body art.
6 Delivery by the person who is under eighteen years of age or
7 younger is not sufficient to permit the administration of body
8 art. Photographic identification of the parent or legal
9 guardian is required.

10 Section 16. MUNICIPALITIES. --The Body Art Safe Practices
11 Act provides minimum standards for safe body art practices. A
12 municipality may by ordinance provide more stringent standards.

13 Section 17. RULES. --The board shall, in conjunction with
14 the department of health, promulgate rules necessary to
15 implement the provisions of the Body Art Safe Practices Act.

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